

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**M.S., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
SYRACUSE VA MEDICAL CENTER,  
Syracuse, NY, Employer**

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**Docket No. 21-0711  
Issued: December 7, 2021**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 9, 2021 appellant filed a timely appeal from a February 22, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the February 22, 2021 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted May 16, 2020 employment incident.

## **FACTUAL HISTORY**

On May 16, 2020 appellant, then a 54-year-old practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on that date, she sustained middle and lower back injuries when a patient she was assisting stumbled and fell into her, while in the performance of duty. She did not stop work. OWCP assigned the claim OWCP File No. xxxxxx288.<sup>4</sup>

In a medical report dated May 20, 2020, Dr. Warren Wulff, a Board-certified orthopedic surgeon, indicated that appellant described a recent incident at work where she tried to catch an unstable patient who fell against the wall. He noted her history of back surgery on October 23, 2019, including lumbar laminectomy and bilateral decompression at L5-S1, and noted that the May 16, 2020 employment incident had caused increased pain in her neck and lower back, numbness in her feet, and referred pain into both arms and down the left lateral hip and thigh. Dr. Wulff obtained x-rays and performed a physical examination which revealed: mildly limited cervical and lumbar range of motion due to pain; tenderness over the left and right paraspinal areas at L3, L4, and L5; and diminished sensation in the right lower extremity and foot. He diagnosed lower back pain, neck pain, and lumbar radiculitis, and opined that the incident described was a competent medical cause of appellant's injuries.

In an August 5, 2018 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and requested a narrative medical report from her treating physician containing a detailed description of findings and a diagnosis, explaining how her work incident caused or aggravated a medical condition. OWCP afforded her 30 days to submit the necessary evidence.

OWCP thereafter received medical notes of Dr. Wulff, which predated the May 16, 2020 employment incident. In a February 6, 2019 note, Dr. Wulff indicated that appellant related complaints of neck, mid back and jaw pain, which she attributed to her repetitive work duties as a nurse. He further noted that she was already taking a muscle relaxer for preexisting low back pain and lumbar radiculitis and diagnosed neck and thoracic spine pain. In follow-up notes dated April 26 and August 6, 2019, Dr. Wulff indicated that appellant continued to complain of cervical spine, thoracic spine, and right upper extremity pain, and he diagnosed cervical radiculopathy, mid back pain, and neck pain.

In a narrative report dated August 13, 2020, Dr. Aaron J. Bianco, a Board-certified orthopedic surgeon, noted that appellant described a history of assisting an unsteady patient, who fell into a wall and dragged her down with him. He noted that she immediately felt as if something in her neck and back were broken, and that her back was "on fire." Dr. Bianco performed a physical examination, which revealed limited range of motion of the cervical and lumbar spine

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<sup>4</sup> Appellant has a previously accepted January 27, 2009 traumatic injury claim under OWCP File No. xxxxxx704 for displacement of lumbar intervertebral disc without myelopathy. She also has a previously accepted March 4, 2010 traumatic injury claim under OWCP File No. xxxxxx015 for thoracic or lumbosacral neuritis or radiculitis and sprain of back, lumbar region.

and tenderness over the lumbar paraspinal musculature. He reviewed x-rays of the cervical spine dated May 20, 2020, which were normal, and of the lumbar spine of even date, which revealed mild disc space narrowing at L5-S1. Dr. Bianco also reviewed July 29, 2020 magnetic resonance imaging (MRI) studies of the cervical spine, which showed disc bulging at C4-5 and C6-7 and lumbar spine, which demonstrated mild bilateral foraminal stenosis at L5 and chronic moderate bilateral foraminal stenosis at L5-S1. He diagnosed: lumbosacral radiculitis; lumbar herniated disc; cervical stenosis; and lumbar stenosis. Dr. Bianco opined that the force of the patient dragging appellant down to the floor as she exerted force to try to keep him standing was the cause of the injury to her low back and neck.

By decision dated September 11, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted May 16, 2020 employment incident. Consequently, it found she had not met the requirements to establish an injury and/or a medical condition.

On September 22, 2020 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review, which took place on January 14, 2021.

Appellant also submitted an updated copy of Dr. Bianco's August 13, 2020 report, containing an October 31, 2020 addendum noting that he had reviewed additional medical records and diagnostic studies. Dr. Bianco explained that he had compared an April 26, 2017 MRI scan of the cervical spine and a July 23, 2018 MRI scan of the lumbar spine with the July 29, 2020 studies, and found the results were essentially unchanged. He opined that the weight of the patient, as he came down, caused strain on the muscles in appellant's neck and back, which aggravated her preexisting March 4, 2010 back injury and a September 1, 2017 neck injury.

By decision dated February 22, 2021, OWCP's hearing representative affirmed the September 11, 2020 decision, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed medical conditions and the accepted May 16, 2020 employment incident. She also instructed that, upon return of the file to OWCP, the current claim should be administratively combined with OWCP File Nos. xxxxxx015 and xxxxxx704.<sup>5</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>7</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the

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<sup>5</sup> OWCP administratively combined appellant's previously accepted claims under OWCP File Nos. xxxxxx015 and xxxxxx704 with the present claim under OWCP File No. xxxxxx288, with it serving as the master file.

<sup>6</sup> *Supra* note 1.

<sup>7</sup> *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.<sup>8</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>9</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>10</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>11</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.<sup>12</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted May 16, 2020 employment incident.

In his narrative report dated August 13, 2020, Dr. Bianco indicated that appellant described a history of assisting an unsteady patient at work, who fell into a wall and dragged appellant down with him. He diagnosed lumbosacral radiculitis, lumbar herniated disc, cervical stenosis and lumbar stenosis. In an October 31, 2020 addendum to the August 13, 2020 report, Dr. Bianco reviewed additional medical records and compared MRI studies taken before and after the accepted employment incident. He noted the findings were essentially unchanged. Dr. Bianco opined that the weight and force of the patient dragging appellant down to the floor as she exerted force to try to keep him standing caused a strain on the muscles in her neck and back, which aggravated her

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<sup>8</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>9</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>10</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>12</sup> *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *M.B.*, Docket No. 20-1275 (issued January 29, 2021); see *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

preexisting neck and back injuries. While his report and addendum provided affirmative opinions, which supported causal relationship, he did not provide a pathophysiological explanation as to how the accepted incident either caused or contributed to appellant's diagnosed conditions.<sup>14</sup> The Board has consistently held that complete medical rationalization is particularly necessary when there are preexisting conditions involving the same body part,<sup>15</sup> and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.<sup>16</sup> Thus, the Board finds that the reports from Dr. Bianco are insufficient to establish causal relationship.

Dr. Wulff, in his May 20, 2020 report, similarly documented appellant's complaints of pain and burning in her neck, shoulders and lower back, which he noted she attributed to an incident at work when she tried to catch an unstable patient who fell against the wall. He further noted her history of a prior lumbar laminectomy and bilateral decompression at L5-S1 on October 23, 2019, and indicated that she experienced increased neck and lower back pain, numbness in her feet, and referred pain into both arms and down the left lateral hip and thigh after the May 16, 2020 employment incident. Dr. Wulff opined that the employment incident she described was a competent medical cause of the injuries. However, he did not provide rationale explaining how the accepted employment incident either caused or contributed to appellant's diagnosed conditions.<sup>17</sup> Furthermore, although Dr. Wulff February 6, April 26, and August 6, 2019 notes documented her prior neck and back complaints, his May 20, 2020 report does not provide medical rationale differentiating between the effects of the work-related injury and the preexisting conditions.<sup>18</sup> As noted above, the Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.<sup>19</sup> For these reasons, the Board finds that his reports are also insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence to support her claim that she sustained a neck or back condition causally related to the accepted May 16, 2020 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>14</sup> *Supra* note 12; *J.G.*, Docket No. 20-0009 (issued September 28, 2020).

<sup>15</sup> *K.R.*, Docket No. 18-1388 (issued January 9, 2019).

<sup>16</sup> *See, e.g., J.G., supra* note 14; *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *J.B.*, Docket No. 17-1870 (issued April 11, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *P.O.*, Docket No. 14-1675 (issued December 3, 2015).

<sup>17</sup> *J.G., id.*; *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>18</sup> *Supra* note 16.

<sup>19</sup> *Supra* note 12.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted May 16, 2020 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board